

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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ROSS ROSENFELD,

Plaintiff,

- v -

CITY OF NEW YORK, et al.,

Defendants.

-----X  
POHORELSKY, Magistrate Judge:

The defendants' motion to compel production of the plaintiff's diaries for inspection and copying is GRANTED. The plaintiff's "law of the case" argument is flawed for two reasons. The two deadlines for raising discovery disputes set by the court applied to two specific sets of discovery requests made by the parties, both of which were served long before the requests were made for the diaries at issue here. Thus, the deadlines were not applicable to disputes concerning the requests for the diaries. Moreover, the plaintiff did not (at least until now) dispute production of the diaries. Counsel's e-mail communicating the cost of copying the diaries is clear evidence that the plaintiff intended to produce the diaries. The plaintiff cannot rely on his own delay in following through on his commitment to produce the diaries as a basis to argue that the defendant did not timely bring this now-disputed issue to the court's attention.

The diaries are to be produced for inspection and copying within 20 days.

**SO ORDERED:**

*Viktor V. Pohorelsky*

VIKTOR V. POHORELSKY  
United States Magistrate Judge

Dated: Brooklyn, New York  
May 20, 2009